

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF NORTH CAROLINA  
CHARLOTTE DIVISION  
3:12cv456  
[Consolidating 3:12cv456, 3:12cv474, 3:12cv624]

MAURINE NIEMAN, Individually and on  
behalf of all others similarly situated )  
Plaintiff, ) [3:12cv456]  
Vs. )  
DUKE ENERGY CORPORATION, *et al.* )  
Defendants. )  
MICHAEL WILLIAM SUNNER, )  
Individually and on behalf of all others )  
similarly situated )  
Plaintiff, ) [3:12cv474]  
Vs. )  
DUKE ENERGY CORPORATION, *et al.* )  
Defendants. )  
JAMES A. CRAIG, Individually and on )  
behalf of all others similarly situated )  
Plaintiff, ) [3:12cv624]  
Vs. )  
DUKE ENERGY CORPORATION, *et al.* )  
Defendants. )

## **ORDER**

**THIS MATTER** is before the court on the court's own Motion to Consolidate<sup>1</sup> this and other matters, which appears upon initial review by the judges of this court to involve a common nucleus of operative facts and issues of law.<sup>2</sup> Resolution of this motion is governed by Rule 41(a), Federal Rules of Civil Procedure, which provides:

**(a) Consolidation.**

If actions before the court involve a common question of law or fact, the court may:

- (1) join for hearing or trial any or all matters at issue in the actions;
- (2) consolidate the actions; or
- (3) issue any other orders to avoid unnecessary cost or delay.

Fed.R.Civ.P. 42(a). The actions as to which this court contemplates consolidation -- 3:12cv456, 3:12cv474, 3:12cv624 -- all fall well within the bounds of Rule 42(a). In each action, the respective plaintiffs propose class actions on behalf of all persons who acquired the common stock of Duke Energy Corporation (Duke) pursuant to and/or traceable to an allegedly misleading *Prospectus and Registration Statement* filed on Form S-4/A with the Securities and Exchange Commission (SEC) on July 7, 2011, for Duke's merger with Progress Energy Inc. (Progress)). In each action, the claims are brought pursuant to §§11 and 12(a)(2) of the Securities Act of 1933 (the Securities Act) against Duke and/or the individual defendants. Thus, all three actions involve common issues of fact and law, and the court has determined that resolution of such action in one proceeding will help avoid unnecessary delay and cost.

Finally, the court will refer resolution of all pretrial issues to Honorable David S. Cayer, United States Magistrate Judge, but will retain resolution of the issue of lead class counsel.

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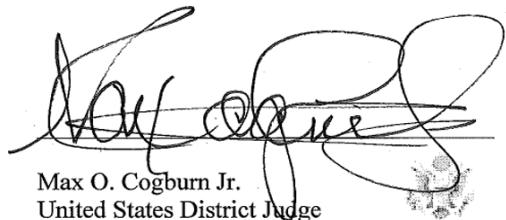
<sup>1</sup> An earlier motion to consolidate was filed in one of the cases, but was denied without prejudice as provided in the Local Civil Rules.

<sup>2</sup> Initially, Craig, 3:12cv624 was assigned to Honorable Graham C. Mullen, Senior United States District Judge. Judge Mullen has joined in the court's Motion for Consolidation and concurs in the reassignment of the action.

**ORDER**

**IT IS, THEREFORE, ORDERED** that the court's own Motion to Consolidate is **GRANTED**, and the **3:12cv456, 3:12cv474, 3:12cv624**, are consolidated as above captioned for all future proceedings. Pleadings shall be filed in 3:12cv456. All pretrial matters are **REFERRED** to Judge Cayer, except the motion[s] for appointment of lead class counsel.

Signed: October 16, 2012



Max O. Cogburn Jr.  
United States District Judge